REMARKS

This submission is in response to the non-final Office Action mailed January 9, 2007. Claims 1-23 are pending. Consideration of the above-identified application, in view of the following remarks, is respectfully requested.

Restriction Requirement

The Examiner has required restriction of the claims to one of the following two Groups under 35 U.S.C. § 121:

Group I:	Claims 1-17 and 21-23, drawn to an aqueous transmucosally delivered controlled release composition and method for administration; and
Group II:	Claims 18-19, drawn to a method of making an aqueous transmucosally delivered controlled release composition.

The Applicants hereby elect, with traverse, to prosecute the claims of Group I (Claims 1-17 and 21-23) drawn to an aqueous transmucosally delivered controlled release composition and method for administration. Please note that in the Official Action, the Examiner listed Group I as consisting of Claims 1-17, 19 and 21-23, and Group II as Claims 17-18. Applicants believe this to be an obvious error, and have elected Group I based on our determination that Group I includes Claims 1-17 and 21-23.

Although Applicants are making the above election to be fully responsive to the Restriction Requirement, Applicants respectfully traverse the Requirement and reserve the right to petition under 37 C.F.R. § 1.144. In particular, Applicants respectfully request reconsideration and withdrawal of the Restriction Requirement to allow prosecution of all claim groups in the present application, for the reasons provided below.

Rejoinder of Groups I and II

The Examiner contends that Group I and Group II are distinct as product and process of

making. According to the Examiner, the product can be made by another and materially different process; and the process as claimed can be used to make another and materially different process. Applicants respectfully traverse the rejection, as Claims 18 and 19 depend from and require the composition of claim 1. Further, Claims 18 and 19 are directed to defining the product in terms of a process by which it is made, a permissible technique that an applicant may use to define an invention. Accordingly, Applicants respectfully request that Group I be rejoined with Group II for examination.

Applicants respectfully reserve their right to rejoinder of the non-elected claims prior to a notice of allowance for the elected claims of Group I in accordance with the guidance given by the Commissioner of Patents and Trademarks in 1184 OG 86. See also *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995) and *In re Brouwer*, 37 USPQ2d 1663 (Fed. Cir. 1996), where the Federal Circuit held that where an otherwise conventional process was patentable if it made or used novel nonobvious products in the claimed processes. See also MPEP 821.04(b), which states,

> ... if applicant elects a claim(s) directed to a product which is subsequently found allowable, withdrawn process claims which depend from or otherwise require all the limitations of an allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must depend from or otherwise require all the limitations of an allowable product claim for that process invention to be rejoined.

Applicants specifically reserve the right to pursue all non-elected subject matter in one or more related applications.

Conclusion

In view of the above amendments and remarks, it is respectfully requested that the application be considered for substantive examination. If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an

Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below. Applicants believe no fee is due at this time. However, if any fees are required, the Commissioner is authorized to charge such fee to Deposit Account No. 02-4377.

Dated: February 2, 2007

Respectfully submitted,

By _____

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